BEFORE THE

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the Following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone And Telephone Company d/b/a Bell Atlantic-Massachusetts	D.T.E. 98-57

COMMENTS OF

SPRINT COMMUNICATIONS COMPANY L.P.

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Dated: February 18, 2000

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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SPRINT COMMUNICATIONS COMPANY L.P.

Pursuant to the procedural memorandum dated February 3, 2000, Sprint Communications Company L.P. ("Sprint") hereby files these comments on the tariff materials of Bell Atlantic-Massachusetts ("Bell Atlantic") concerning Unbundled Network Element-Platform Combinations ("UNE-P") filed in the above-referenced proceeding in compliance with the Department's Phase 4-P Order dated January 10, 2000, in the Consolidated Arbitrations proceeding.

In summary, Sprint respectfully recommends that the Department (1) establish long-term pricing policies and set recurring and non-recurring rates for certain combinations of UNEs by using Total Element Long Run Incremental Costs ("TELRIC") and (2) order Bell Atlantic to make available to CLECs further UNE combinations, including xDSL loops and services, loops and Digital Subscriber Line Access Multiplexer ("DSLAMs"), packet switching, data transport between the DSLAM and packet switching elements and spectrum unbundling through resale and as UNEs, separately and in combination.

INTRODUCTION

On March 19, 1999, the Department ruled that because Bell Atlantic had committed to the Federal Communications Commission ("FCC") to continue to provide individual UNEs that had been included in FCC Rule 319, even though that rule had been vacated by the Supreme Court, Bell Atlantic was obligated also to comply with FCC Rule 315(b) regarding the provision of existing assembled UNEs. Thus, Bell Atlantic was required to provide existing combined UNEs in their combined form to CLECs.

On May 21, 1999, the Department issued its Phase 4-K Order in the Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83 and 96-94. (the "Phase 4-K Order"). In the Phase 4-K Order, the Department rejected Bell Atlantic's April 17, 1998 proposal to provision UNEs solely through collocation as not in compliance with Section 251(c)(3) of the Telecommunications Act of 1996. The Department further ruled that Bell Atlantic would be permitted to offer the additional collocation options contained in its April 17, 1998 proposal, even though those options were legally deficient. Finally, the Department ruled that:

…Bell Atlantic file with the Department within 28 days from the date of this Order a UNE provisioning plan that incorporates the directives herein;

…Bell Atlantic incorporate the directives herein into its Tariff No. 17, to be filed with the Department 21 days from the date of this Order.

In compliance with the Department's Phase 4-K Order, Bell Atlantic filed its compliance submission on UNE Provisioning with the Department on June 18, 1999 ("Compliance Filing"). There, Bell Atlantic proposed to provide CLECs with the UNE-P, where the Loop and Local Switching UNEs are not already combined, for the provision of residential and business POTS service and residential and business Basic Rate Interface ISDN service (BRI ISDN switch port and premium loop), under specified terms and conditions. See Compliance Filing at 4.

On October 20, 1999 the Department issued a procedural notice asking for comments on the Compliance Submission. Subsequent to comments being filed by the parties, on January 10, 2000, the Department issued its Phase 4-P Order. In that Order the Department directed Bell Atlantic to file a tariff in which the terms and conditions surrounding its UNE-P service offering are clearly stated and which includes all applicable charges.

In response to the Phase 4-P Order, on January 14, 2000, Bell Atlantic filed its proposed M.D.T.E. No. 17 ("Tariff 17") consisting of rates and regulations for UNE-P. In addition, pursuant to the Department's Phase 4-Q Order in the Consolidated Arbitrations, on February 3, 2000, Bell Atlantic filed further revisions to its proposed Tariff No. 17 consisting of rates, terms, and conditions for House and Riser Cable ("HARC").

In a procedural memorandum and Hearing Officer ruling issued January 25, 2000, the Hearing Officer in D.T.E. 98-57 indicated that the Department was considering whether to investigate the UNE-P and HARC tariff updates in D.T.E. 98-57, or in a separate proceeding. On February 3, 2000, the Hearing Officers issued a procedural memorandum indicating that the Department had determined that it will investigate these updates in D.T.E. 98-57, designated as Phase II, under separate suspension schedule.

The UNE-P issue has also been recently addressed by the United States Supreme Court ("Supreme Court") and the Federal Communications Commission ("FCC"). On January 25, 1999, the Supreme Court issued its decision in AT&T Corporation v. Iowa Utilities Board, 119 S.Ct. 721 (1999). This matter had come before the Supreme Court on writs of certiorari from the decision of the Eighth Circuit Court of Appeals which had vacated portions of the FCC's Local Competition Order issued on August 8, 1996. Among other provisions, the Eighth Circuit had vacated FCC Rule 315(b) which prohibited ILECs from separating elements which are already combined. The Supreme Court reversed the Eighth Circuit on this issue, reinstating Rule 315(b). The Supreme Court affirmed the ruling of the Eighth Circuit that CLECs can provide local service relying solely on the elements in an incumbent's network. The Supreme Court ruled, however, that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbents must provide to CLECs. As a result, the Supreme Court vacated the FCC's Rule 319.

On September 15, 1999, the FCC completed its reconsideration of Rule 319, adopting its UNE Remand Order. The FCC's written order was released on November 5, 1999. In this UNE Remand Order, the FCC revised, in light of the Supreme Court's order, the list of the network elements that ILEC must provide on an unbundled basis and issued a new Rule 319. The FCC ruled that the following elements must be unbundled: Loops, subloops, network interface device (NID), circuit switching, interoffice transmission facilities, signaling and call-related databases, and operations support systems (OSS). For circuit switching, the FCC ruled that Incumbent LECs must offer unbundled access to local circuit switching, except for switching used to serve business users with four or more lines in FCC access density zone 1 (the densest areas) in the top 50 Metropolitan Statistical Areas (MSAs), provided that

the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link (EEL, a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport.). The FCC ruled that, pursuant to section 51.315(b) of the FCC's rules, incumbent LECs are required to provide access to combinations of loop, multiplexing/concentrating equipment and dedicated transport if they are currently combined. The FCC did not readdress whether an incumbent LEC must combine network elements that are not already combined in the network, because that issue is pending before the Eighth Circuit Court of Appeals. Finally, the FCC sought comment on the legal and policy bases for precluding requesting carriers from substituting dedicated transport for special access entrance facilities.

On November 24, 1999, the FCC issued a Supplemental Order to its UNE Remand Order. In this Supplemental Order, the FCC modified its conclusion in paragraph 486 of the UNE Remand Order to allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. IXCs may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities, unless the IXC uses the combination "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

Under the 1996 Act, State Commissions are authorized to set rates and pricing policies for interconnection and access to unbundled elements pursuant to Sections 251 and 252 of the 1996 Act.

In summary, Sprint respectfully recommends that the Department (1) establish long-term pricing policies and set recurring and non-recurring rates for certain combinations of UNEs by using Total Element Long Run Incremental Costs ("TELRIC") and (2) order Bell Atlantic to make available to CLECs further UNE combinations, including xDSL loops and services, loops and Digital Subscriber Line Access Multiplexer ("DSLAMs"), packet switching, data transport between the DSLAM and packet switching elements and spectrum unbundling through resale and as UNEs, separately and in combination.

I. UNE COMBINATIONS GENERALLY

Before determining the actual rates for any combinations of unbundled network elements, the Commission must address certain underlying issues. In particular, the Commission must determine the scope of Bell Atlantic's obligation to provide combinations of UNEs and the applicable pricing standards that apply to combinations of UNEs.

A. Rule 319 / Necessary and Impair Standard

In January 1999, the Supreme Court ruled that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbent LECs must provide to CLECs. In response to this ruling, the FCC completed its reconsideration of Rule 319 and specified in its UNE Remand Order a national list of UNEs that ILECs must provide: Loops, subloops, network interface device (NID), circuit switching, interoffice transmission facilities, signaling and call-related databases, and operations support systems (OSS).

For UNEs on the national list, there is no need for this Department to consider the necessary and impair standard since the FCC already made that determination. Indeed, the FCC stated that the goals of the 1996 Act would better be served if network elements are not removed from the national list on a state-by-state basis, at this time. The UNE Remand Order did recognize that state commissions are authorized to require incumbent LECs to unbundle additional elements as long as the obligations are consistent with the requirements of section 251. Accordingly, the Department would apply the necessary and impair standard to the extent it considered a request to expand the unbundling requirements under the 1996 Act.

B. Applicability of FCC Rules to Pricing UNE Combinations

In its Local Competition Order, the FCC had required that prices for UNEs be developed using the TELRIC methodology. The Eighth Circuit had vacated the FCC's pricing rules on the grounds that pricing was outside of the FCC's jurisdiction and was reserved for the states. The Supreme Court overturned the Eighth Circuit on this issue, ruling that the FCC had jurisdiction to design a pricing methodology that the States must use. Since it had determined that the FCC lacked the jurisdiction to require a particular pricing methodology, the Eighth Circuit never reached the issue of whether TELRIC complies with the Act. The Supreme Court remanded this issue back to the Eighth Circuit. The FCC's pricing rules have been reinstated by the Supreme Court and are currently in effect pending the Eighth Circuit's review of TELRIC.

The FCC did establish pricing rules to govern the provision of currently combined UNEs. The FCC's pricing rules provide:

Rule 51.501 Scope.

The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled network elements, including physical collocation and virtual collocation.
As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining access to unbundled elements.
Rule 51.503 General Pricing Standard.

An incumbent LEC shall offer elements to requesting carriers at rates terms and conditions that are just, reasonable and nondiscriminatory.
An incumbent LEC's rates for each element it offers . . . shall be established, at the election of the state commission-
pursuant to the forward-looking economic cost-based pricing methodology set forth in §§51.505 and 51.511 of this part; or
consistent with the proxy ceilings and ranges set forth in §51.513 of this part.
The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of service that the requesting carrier purchasing such elements uses them to provide.
The rules clearly apply to the pricing of all network elements. Nowhere in the rules does the FCC imply that they apply only to network elements that are physically separated from other network elements. The rules do refer to "unbundled" elements; however, the Supreme Court specifically rejected the argument that the term unbundled means physically separated:

Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in §251(c)(3) means "physically separated." The dictionary definition of "unbundled" (and the only definition given, we might add) matches the FCC's interpretation of the word: "to give separate prices for equipment and supporting services." Webster's Ninth New Collegiate Dictionary 1283 (1985).

In its UNE Remand Order, the FCC made it clear that it considered its pricing rules for UNEs to be applicable to combinations of UNEs. In sum, the FCC pricing rules do apply to combinations of network elements.

C. Currently Combines

FCC Rule 315 addressed combinations of unbundled network elements. Rule 315(b) provides:

Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

Emphasis added. Bell Atlantic has stated that it will voluntarily provide the combination even where the loop and local switching elements comprising the UNE-P do not already exist in combined form for a specific customer in its network.

The Department needs to confirm that the term "currently combines" means elements that are typically combined in the ILECs network, even if the particular elements being ordered are not actually combined at the time the order is placed.

II. THE DEPARTMENT SHOULD SET UNE COMBINATION RATES

Sprint respectfully recommends that the Department establish long-term pricing policies and set recurring and non-recurring rates for certain combinations of UNEs by using Total Element Long Run Incremental Costs ("TELRIC"). These pricing issues need to be addressed in an evidentiary hearing.

Recurring and nonrecurring charges for UNE combinations should be determined using the TELRIC costing methodology. The Department should set recurring and nonrecurring charges for UNE combinations requested by CLECs.

Moreover, Sprint respectfully recommends that the Department order Bell Atlantic to make available to CLECs further UNE combinations, including xDSL loops and services, loops and Digital Subscriber Line Access Multiplexer ("DSLAMs"), packet switching, data transport between the DSLAM and packet switching elements and spectrum unbundling through resale and as UNEs, separately and in combination.

CONCLUSION

The Department should establish long-term pricing policies for combinations of UNE and set recurring and non-recurring rates for certain combinations of UNEs. This includes the setting of pricing policies generally for combinations of UNE. Moreover, Sprint respectfully recommends that the Department order Bell Atlantic to make available to CLECs further UNE combinations, including xDSL loops and services, loops and Digital Subscriber Line Access Multiplexer ("DSLAMs"), packet switching, data transport between the DSLAM and packet switching elements and spectrum unbundling through resale and as UNEs, separately and in combination. Hearings should be held on these issues and the Department should render its decision with appropriate findings of fact and conclusions of law. There is no reason to postpone or delay a decision in this matter.

Respectfully submitted,

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